

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHERINE FLORES and U.S. POSTAL SERVICE,
POST OFFICE, Grand Rapids, Mich.

*Docket No. 96-2459; Submitted on the Record;
Issued August 25, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has reached maximum medical improvement and is entitled to a schedule award.

The Office of Workers' Compensation Programs accepted appellant's claim for right retrocalcaneal bursitis and pulled hamstring. On August 2, 1995 appellant filed a claim for a schedule injury and submitted evidence to support her claim. Appellant submitted progress notes from her treating physician, Dr. Stephen Burton, a Board-certified orthopedic surgeon, dated April 11, 1995 through January 16, 1996 which documented her ongoing problem with Achilles tendinitis and reflex sympathetic dystrophy. Appellant also submitted a medical report from Dr. Burton dated January 24, 1996 in which he stated that he did not believe that appellant reached maximum medical improvement and anticipated that appellant would reach maximum medical improvement in the next six to nine months. In that report, he also provided numerical data assessing the degree of the impairment.

By decision dated March 15, 1996, the Office denied the claim stating that the evidence of record failed to establish that appellant had reached maximum medical improvement in order to be eligible to receive a schedule award.

By letter dated April 12, 1996, appellant requested reconsideration of the Office's decision and submitted a medical report from Dr. Burton dated March 26, 1996 and an additional progress note from Dr. Burton dated February 21, 1996 documenting her ongoing treatment. In his March 26, 1996 report, Dr. Burton reiterated that appellant had Achille's tendinitis and reflex sympathetic dystrophy secondary to trauma. He stated that it was directly related to her January 19, 1993 employment injury. Dr. Burton further stated that the pain was still quite significant although it was markedly diminished and that it interfered with appellant's activities. Dr. Burton stated that appellant did not require ongoing treatment. He further stated that appellant had "gained the maximum medical improvement possible."

By decision dated April 16, 1996, the Office denied appellant's reconsideration request.

By letter dated April 23, 1996, appellant requested reconsideration of the Office's decision and resubmitted Dr. Burton's reports dated January 24 and March 26, 1996.

By decision dated June 21, 1996, the Office denied appellant's reconsideration request.

The Board finds that this case is not in posture for decision.

A schedule award is not payable until maximum improvement of appellant's condition has been reached.¹ Maximum improvement means that the physical condition of the injured member of the body has stabilized and will not improve further.² Generally, maximum improvement has not been reached until medical treatment has been discontinued.³ The determination of the date of maximum medical improvement is factual in nature and depends primarily on the medical evidence.⁴

In the present case, Dr. Burton, appellant's treating physician, who had been treating appellant since November 8, 1994, stated in his March 26, 1996 report that appellant continued to suffer from Achilles tendinitis, that it did not require ongoing treatment and that she had gained "the maximum medical improvement possible." His report is sufficient to establish maximum medical improvement as it indicates that appellant's tendinitis condition had stabilized. In its April 15, 1996 decision, the Office did not address the substance of Dr. Burton's March 26, 1996 report stating that it was neither new nor relevant evidence and was duplicative of previously considered information. Dr. Burton's March 26, 1996 report, however, is relevant because it addresses whether appellant's tendinitis condition reached maximum medical improvement. It also constituted new evidence. The Board has held that the Office is required to make findings of fact and a statement of reasons regarding the material facts of the case.⁵ Since the Office did not address Dr. Burton's 26, 1996 report substantively, the case must be remanded for the Office to address whether his report establishes that appellant reached maximum medical improvement and to give reasons for its finding, to be followed by a *de novo* decision. If the Office finds that Dr. Burton's March 26, 1996 report establishes that appellant reached maximum medical improvement, it should review the evidence and determine appellant's entitlement to a schedule injury.

¹ *Orlando Vivens*, 43 ECAB 303, 308 (1991); *Robert L. Mitchell*, 34 ECAB 8, 13 (1982).

² *Id.*

³ *Id.*

⁴ *Jerre R. Rinehart*, 45 ECAB 518, 520 n. 3 (1994).

⁵ *Beverly Dukes*, 46 ECAB 1014, 1017 (1995); see 20 C.F.R. § 10.130.

The decisions of the Office of Workers' Compensation Programs dated June 21, April 15 and March 15, 1996 are hereby set aside and the case is remanded for further development consistent with this opinion, to be followed by a *de novo* decision.

Dated, Washington, D.C.
August 25, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member